

House Amendment to
Senate File 449

S-3135

Amend Senate File 449, as passed by the Senate, as follows:

1. Page 1, before line 1 by inserting:

<DIVISION I

PUBLIC IMPROVEMENT LOCATION AND UNUSED PORTION OF
CONDEMNED PROPERTY>

2. Page 2, line 33, after <this> by inserting
<division of this>

3. Page 3, line 2, after <this> by inserting
<division of this>

4. Page 3, after line 5 by inserting:

<DIVISION

CONDEMNATION FOR CREATION OF A LAKE — NUMBER OF ACRES

Sec. _____. Section 6A.22, subsection 2, paragraph c,
subparagraph (1), subparagraph division (b), Code 2015,
is amended to read as follows:

(b) (i) For purposes of this subparagraph (1),
“*number of acres justified as necessary for a surface
drinking water source*” means according to guidelines of
the United States natural resource conservation service
and according to analyses of surface drinking water
capacity needs conducted by one or more registered
professional engineers.

(ii) For condemnation proceedings for which the
application pursuant to section 6B.3 was filed after
January 1, 2013, for condemnation of property located
in a county with a population of greater than nine
thousand two hundred fifty but less than nine thousand
three hundred, according to the 2010 federal decennial
census, which property was in whole or in part subject
to an action under section 6A.24 for which the petition
under section 6A.24 was filed after January 1, 2013,
but before January 1, 2014, “*number of acres justified
as necessary for a surface drinking water source*”, as
determined under subparagraph subdivision (i) shall
not exceed the number of acres that would be necessary
to provide the amount of drinking water to meet the
needs of a population equal to the population of the
county where the lake is to be developed or created,
according to the most recent federal decennial census.
However, if the population of the county where the
lake is to be developed or created increased from the
federal decennial census immediately preceding the
most recent federal decennial census, the “*number of
acres justified as necessary for a surface drinking
water source*” shall not exceed the number of acres that
would be necessary to provide the amount of drinking
water to meet the needs of a population equal to the
product of one plus the percentage increase in the
population of the county between the two most recent

1 federal decennial censuses multiplied by the county's
2 population according to the most recent federal
3 decennial census.

4 Sec. _____. EFFECTIVE UPON ENACTMENT. This division
5 of this Act, being deemed of immediate importance,
6 takes effect upon enactment.

7 DIVISION _____
8 CONDEMNATION FOR CREATION OF A LAKE — EXISTING SOURCES

9 Sec. _____. Section 6A.22, subsection 2, paragraph c,
10 subparagraph (1), Code 2015, is amended by adding the
11 following new subparagraph division:

12 NEW SUBPARAGRAPH DIVISION. (0b) For condemnation
13 of property located in a county with a population
14 of greater than nine thousand two hundred fifty but
15 less than nine thousand three hundred, according to
16 the 2010 federal decennial census, prior to making
17 a determination that development or creation of a
18 lake as a surface drinking water source is reasonable
19 and necessary, the acquiring agency shall conduct a
20 review of feasible alternatives to development or
21 creation of a lake as a surface drinking water source.
22 An acquiring agency shall not have the authority
23 to condemn private property for the development or
24 creation of a lake as a surface drinking water source
25 if one or more feasible alternatives to provision of
26 a drinking water source exist. An alternative that
27 results in the physical expansion of an existing
28 drinking water source is presumed to be a feasible
29 alternative to development or creation of a lake as
30 a surface drinking water source. An alternative that
31 supplies drinking water by pipeline or other method of
32 transportation or transmission from an existing source
33 located within or outside this state at a reasonable
34 cost is a feasible alternative to development or
35 creation of a lake as a surface drinking water source.
36 If private property is to be condemned for development
37 or creation of a lake, only that number of acres
38 justified as necessary for a surface drinking water
39 source, and not otherwise acquired, may be condemned.
40 Development or creation of a lake as a surface drinking
41 water source includes all of the following:

42 (i) Construction of the dam, including sites for
43 suitable borrow material and the auxiliary spillway.

44 (ii) The water supply pool.

45 (iii) The sediment pool.

46 (iv) The flood control pool.

47 (v) The floodwater retarding pool.

48 (vi) The surrounding area upstream of the dam
49 no higher in elevation than the top of the dam's
50 elevation.

1 (vii) The appropriate setback distance required
2 by state or federal laws and regulations to protect
3 drinking water supply.

4 Sec. _____. Section 6A.24, subsection 3, Code 2015,
5 is amended to read as follows:

6 3. For any action brought under this section,
7 the burden of proof shall be on the acquiring agency
8 to prove by a preponderance of the evidence that
9 the finding of public use, public purpose, or public
10 improvement meets the definition of those terms.
11 However, for any action brought under this section
12 that involves property described in section 6A.22,
13 subsection 2, paragraph "c", subparagraph (1),
14 subparagraph division (0b), the burden of proof shall
15 be on the acquiring agency to prove by clear and
16 convincing evidence that no feasible alternatives
17 to provision of a drinking water source exist. If a
18 property owner or a contract purchaser of record or a
19 tenant occupying the property under a recorded lease
20 prevails in an action brought under this section, the
21 acquiring agency shall be required to pay the costs,
22 including reasonable attorney fees, of the adverse
23 party.

24 Sec. _____. EFFECTIVE UPON ENACTMENT. This division
25 of this Act, being deemed of immediate importance,
26 takes effect upon enactment.

27 Sec. _____. APPLICABILITY. This division of this Act
28 applies to projects or condemnation proceedings pending
29 or commenced on or after the effective date of this
30 division of this Act.

31 DIVISION _____

32 DISPOSITION OF CONDEMNED PROPERTY

33 Sec. _____. Section 6B.56A, subsection 4, Code 2015,
34 is amended to read as follows:

35 4. This section does not apply to property acquired
36 for street and highway projects undertaken by the
37 state, a county, or a city or to property that is
38 subject to the disposition of property requirements
39 under section 6B.56B.

40 Sec. _____. NEW SECTION. **6B.56B Disposition of**
41 **condemned property — lake creation.**

42 1. When two years have elapsed since property was
43 condemned for the creation of a lake according to the
44 requirements of section 6A.22, subsection 2, paragraph
45 "c", subparagraph (1), subparagraph division (0b), and
46 the property has not been used for the purpose stated
47 in the application filed pursuant to section 6B.3, and
48 the acquiring agency has not taken action to dispose of
49 the property pursuant to section 6B.56, the acquiring
50 agency shall, within sixty days, adopt a resolution

1 offering the property for sale to the prior owner at a
2 price as provided in section 6B.56. If the resolution
3 adopted approves an offer of sale to the prior owner,
4 the offer shall be made in writing and mailed by
5 certified mail to the prior owner. The prior owner has
6 one hundred eighty days after the offer is mailed to
7 purchase the property from the acquiring agency.

8 2. If the acquiring agency has not adopted a
9 resolution described in subsection 1 within the
10 sixty-day time period, the prior owner may, in writing,
11 petition the acquiring agency to offer the property
12 for sale to the prior owner at a price as provided in
13 section 6B.56. Within sixty days after receipt of
14 such a petition, the acquiring agency shall adopt a
15 resolution described in subsection 1. If the acquiring
16 agency does not adopt such a resolution within sixty
17 days after receipt of the petition, the acquiring
18 agency is deemed to have offered the property for sale
19 to the prior owner.

20 3. The acquiring agency shall give written notice
21 to the owner of the right to purchase the property
22 under this section at the time damages are paid to the
23 owner.

24 Sec. _____. EFFECTIVE UPON ENACTMENT. This division
25 of this Act, being deemed of immediate importance,
26 takes effect upon enactment.

27 Sec. _____. APPLICABILITY. This division of this Act
28 applies to projects or condemnation proceedings pending
29 or commenced on or after the effective date of this
30 division of this Act.>

31 5. Title page, line 3, after <including> by
32 inserting <effective date and>

33 6. By renumbering, redesignating, and correcting
34 internal references as necessary.